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We are here today to discuss the constitutional implications of the Republican refusal to even consider a nomination of the next Supreme Court Justice. This development dramatizes as much as any event over the past eight years how basically the party of no is undermining the very structure of our democracy.

The proper functioning of the separation of powers between the President and Congress has been deeply damaged in a two-dimensional way caused by the congressional Republican Party's disrespect for democracy and its reflexive negativity about legislation. This has gone on from the moment of President Obama's inauguration and has contributed significantly to the current public disgust about the functioning of our government.

Now, for the first time in history, we have a three-way breakdown in the separation of powers. This is a structural problem and it is a constitutional problem in a structural sense. The nomination and confirmation of a Supreme Court Justice is one of the most important responsibilities the other two branches have in our constitutional structure. For one of the major parties in our country to thumb its nose at that responsibility is to strike a blow at the heart of the idea of checks and balances that is absolutely basic to our constitutional framework.

Suppose a state refused to have a structure of public education. Suppose a city refused to have a police department. Are they violating the Constitution when they do that? We believe it is fundamental to our democracy to have a school system and a police department. It is probably not the kind of dispute a court would take on, but we nonetheless think of it as an affirmative duty, a duty that is crucial in our constitutional framework. Here the affirmative obligation is explicit. The responsibility to "advise and consent" is actually written in the Constitution. It too is not justiciable – I think I can safely say that – but when a seat on the Supreme Court is the subject it is a responsibility that is at the very core of our constitutional framework. It is at the peak of importance to the functioning of our democracy. This basic duty has always been carried out by tacit acceptance and agreement without any question. It has been the understanding of both parties throughout our history. The Republican Party is on a path to violate that tacit agreement.

The Republican Senators and others of their party are on the way to violating a fundamental tenet of our constitutional architecture. We have been watching a serious undermining of our democratic institutions for the last eight years and it is on the way to happening again. The Republicans have taken a dangerous step toward an unprecedented violation of the separation of powers if they continue to refuse to take even the tiniest step toward carrying out their constitutionally required responsibility of "advise and consent."

The death of Justice Scalia has unexpectedly brought the Supreme Court into the presidential campaign, which I believe is a constructive event for the nation. A debate about the role and direction of the work of the Court – a debate about the very meaning of the Constitution – should be undertaken in a manner of dignity and respect. The reaction of the Republican Party up to now takes us in the opposite direction.